Proposed changes to the State Regulations Implementing Part B of the Individual with Disabilities Education Act (IDEA)
Summary of Comments and Response from the Department (DESE)
April, 2007

Section	Summary of Comments	DESE Response
I	Several commenters asked that the Department add a definition of "agree or agreement."	The terms in this section are generally those that are included in the federal regulations and referenced throughout the regulations. As a definition of "agree and agreement" is included by the Office of Special Education programs in the comments to the final federal regulations, the DESE agrees to include these definitions in the state regulations.
	Some commenters requested that a definition of "service animal" be included, as well as the term "training" be defined.	As indicated above, the definitions included in this section are those included in the Federal Statute and Regulations and referenced throughout the Regulations. The DESE declines to add definitions that are not referenced in the Federal statute or federal and state regulations.
	Some commenters wanted the Act to be referred to as the Individuals with Disabilities Education Improvement Act (IDEIA) throughout.	Congress has spoken to this issue and indicated that the Act will continue to be referred to as the IDEA. No change made.
	Some commenters requested that a "partial day" be defined.	The federal regulations include definitions for a "day." The DESE has chosen to follow the federal regulations and declines to expand our definition for a "day." No change.
	A commenter asked that we more clearly define what a HOUSSE rule is and what it means specifically to Missouri.	The federal regulations for IDEA incorporate the requirements of No Child Left Behind (NCLB) for Highly Qualified Teachers by reference. A description of the HOUSSE rule is included. The DESE does not believe that it is necessary to further define HOUSSE or include Missouri specific information regarding HOUSSE in the IDEA state regulations. No change made.
	One commenter asked that some definitions that were not included in Section I, but were referenced to other sections of the regulations, be included in their entirely in Section I.	The DESE agrees and has added the complete definitions to all terms in Section I.
II	Commenters asked that the discretion of the public agency to allow parent access to records of 18-year-old students who are dependents, be eliminated. A concern mentioned was the impact of the Missouri Sunshine Law. Another concern mentioned was that a school district might use this discretion to contravene a student's designation of his parent as an advocate for purposes of record access.	The proposed language is consistent with the language of the Family Educational Rights and Privacy Act regulations, as incorporated by reference in the IDEA. Whether Missouri "Sunshine Law" requires record access to parents of students older than age 18 is unclear. The Sunshine Law does not use the "dependent" language of FERPA. As the Sunshine Law is outside the scope of IDEA and is unclear on this issue, we decline to make the change requested. No change made.
III	Commenters asked not to remove the "professional judgment" section from the criteria for initial determination of eligibility.	Professional judgment for initial determination of eligibility for learning disabilities (LD) has been reinserted for use when the LEA is not using a Response to Intervention model for eligibility determination. In reviewing the Professional Judgment criteria in the current regulations for Mental Retardation (MR), it was determined that the existing criteria for Professional Judgment for MR was inappropriate for that category and that the deletion should remain.

Section	Summary of Comments	DESE Response
	Commenters asked that the reference to Section 504 of the Rehabilitation Act of 1973 not be deleted.	While students with disabilities identified under the IDEA are covered under Section 504, the DESE does not administer Section 504. The DESE includes guidance information regarding Section 504 on its website, but declines to include information regarding Section 504 in State regulations implementing the IDEA. No change.
	Commenters asked that wording in the Autism definition be changed for clarity.	The DESE agrees. The word "above" has been deleted to avoid confusion in the definition.
	Commenters requested that all four areas of disturbance be included in the required criteria for Autism, rather than just disturbances in speech and capacity to relate. It was also asked that developmental rates and response to sensory stimuli be added as required areas.	The eligibility criteria for Autism was reviewed by a group of stakeholders in recent years. The DESE declines to make changes requested.
	Several commenters requested that the following changes be made to the eligibility criteria for Deaf/Blindness: Add A. both visual and hearing impairments are present **as described in the criteria for Hearing Impairment/Deafness & Visual Impairment/Blindness.** Delete B in proposed regulations. B would become prior C.	The DESE agrees that the proposed change adds clarity to the eligibility criteria for Deaf/Blindness. Changes made.
	Commenters asked the DESE to define the term "socially maladjusted" or take the word out of the definition of Emotional Disturbance.	The term "socially maladjusted" is included in the definition of Emotional Disturbance in the federal regulations. As the definitions for all categorical disabilities follow those of the federal regulations, the DESE declines to remove this term from the definition in state regulations. As noted previously, the definitions included in the state regulations are those of terms that are defined in federal regulations and used throughout the regulations. As the term "socially maladjusted" is not defined in federal regulations, the DESE declines to include a definition in state regulations. The DESE will consider providing a definition in guidance documents.
	Commenters asked that the label "Emotional Disturbance" be changed to "Emotional Disability."	The labels used throughout are those used in the federal regulations. The DESE declines to make label changes that are not consistent with the labels used in the federal regulations.
	Numerous comments were received indicating opposition to the proposed changes in the State regulations for Hearing Impairment and Deafness.	The proposed changes have not been made. The original language has been restored.
	Commenters asked to change the label for "Hearing Impairment and Deafness" to "Hearing Loss and Deafness."	The labels used throughout are those used in the federal regulations. The DESE declines to make label changes that are not consistent with the labels used in the federal regulations.

Section	Summary of Comments	DESE Response
	Numerous comments were received on the label for "Mental Retardation/Cognitive Impairment." Some commenters asked that the term "Intellectual Disability" be used instead of "Cognitive Impairment" to be consistent with the recent name change of the AAMR. Some commenters wanted the term "Mental Retardation" removed from the label, while other commenters wanted just the term "Mental Retardation" to remain.	In order to remain consistent with using those terms that are in the federal regulations, the DESE will continue to use the term Mental Retardation. The addition of an alternative term for this category was made at the request of a group of stakeholders and the DESE declines to remove that alternative term. The DESE agrees with the request to change the alternative term to "Intellectual Disability" and has made that change.
	Some commenters disagreed with the removal of Professional Judgment from the MR/ID category, while some commenters supported the removal.	As there seems to be no clear consensus from the field regarding the use of Professional Judgment for this disability category and, as stated above, during the review of the Professional Judgment criteria in the current regulations for Mental Retardation (MR), it was determined that the existing criteria was inappropriate for the category, the deletion will remain.
	Some commenters requested that more specificity regarding the use of Adaptive Behavior scores be added to the eligibility determination criteria for MR/ID.	The DESE feels that the criteria, as stated, are appropriate and hesitates to add more specificity to the eligibility criteria in the regulations. The DESE will consider including more specificity in guidance regarding eligibility determinations.
	Some commenters requested that the label for "Orthopedic Impairments" be changed to "Physical Disability."	In order to remain consistent with using those terms that are in the federal regulations, the DESE will continue to use the term Orthopedic Impairment.
	Commenters requested that School Psychologist be added to the list of people qualified to diagnose a health impairment, as School Psychologists are qualified to make diagnoses of ADHD.	The DESE agrees. This change has been made.
	Commenters requested that the label "Other Health Impairment" be changed to "Health Related Disability."	In order to remain consistent with using those terms that are in the federal regulations, the DESE will continue to use the term Other Health Impairment.
	Commenters requested that the word "culture" in the definition of Learning Disabilities be moved.	The DESE declines to make this change as the definition is from the federal regulations and changing the order of the wording would, in effect, change the definition.
	Commenters asked that some wording and ordering of items be made to the eligibility criteria to make it clearer.	The DESE agrees and has made changes to add clarity to the criteria.
	Numerous commenters requested that the section requiring "a severe discrepancy between a child's performance in relation to State approved grade level standards and the child's grade placement of at least 1.5 grade levels" be removed as they believed this statement to be unclear, difficult to determine and held the potential to identify a significantly larger number of students.	The DESE agrees and has removed this requirement.
	Commenters requested that a second qualifier be added to the criteria for Language that allowed the use of Response to Intervention.	The use of Response to Intervention (RtI) for the determination of eligibility is only referenced in the federal regulations for Specific Learning Disability. In order to maintain consistency with the federal regulations, the DESE declines to reference the use of RtI for eligibility determination in any other disability category.

Section	Summary of Comments	DESE Response
	Several commenters opposed the change in eligibility criteria for Language Impairment for children ages Kindergarten age eligible through age 8.	This change was recommended by a group of stakeholders in order to make the criteria for Language Impairment consistent with that of the YCDD and SLD categories. The DESE believes this change should remain in order to establish internal consistency within the eligibility criteria for similar categorical disabilities.
	Commenters requested that Speech and Language be broken into two separate categories.	The individual categories within Speech and Language are broken down for definitions and eligibility criteria. The DESE believes this to be sufficient.
	Some commenters agreed with the requirement to use State-designated normative standards for Sound System Disorder and some commenters disagreed.	A group of stakeholders asked that the state reinstate the requirement for the use of a designated normative data set for identification of Sound System Disorder. The DESE agrees. The change will remain as proposed.
	Commenters asked that an "and" be added after 1 in the eligibility criteria for Sound System Disorder to make it clear that all three criteria must be met.	The regulations use a standard format for lists. The addition of "and" is unnecessary.
	Commenters requested that the concept of eligibility without a medical diagnosis be removed from Professional Judgment in the category of Traumatic Brain Injury and added to A in the eligibility criteria. It was also requested that Professional Judgment for TBI then be removed.	The eligibility criteria for Traumatic Brain Injury (TBI) was reviewed by a group of stakeholders in recent years. The DESE declines to make changes requested.
	Several commenters expressed opposition to proposed changes for Visual Impairment/Blindness.	The proposed changes have been removed and the original language reinstated.
	Commenters requested that the term "Visual Impairment/Blindness" be changed to "Vision Loss/Blindness."	In order to remain consistent with using terms that are in the federal regulations, the DESE will continue to use the term Visual Impairment/Blindness.
	Some commenters asked that Professional Judgment be eliminated from the YCDD category and that A & B under Professional Judgment be incorporated into the eligibility criteria above.	The eligibility criteria for Young Child with a Developmental Delay (YCDD) was reviewed by a group of stakeholders in recent years. The DESE declines to make changes requested.
	A commenter asked if the requirement for informed consent from the parent for initial evaluation is defined the same as elsewhere in the standards as two attempts and if so, would it be true that the IEP team can make initial placement without informed consent.	The commenter is confused. Consent for initial evaluation is not the same as consent for initial placement. The parent must give informed, written consent for both the initial evaluation and initial placement. Two attempts is not referenced in the state regulations, but in the *Compliance Monitoring Standards and Indicators* in relation to scheduling of meetings with parents.
	A commenter stated that the term "written" should not be removed from the definition of Parental Consent for Initial Evaluation.	The regulation referenced is not the definition of "consent." Consent is defined in another section of the regulations and it is clear that consent is "informed and written." DESE does not feel that it is necessary to include "informed and written" in every location where the term "consent" is used. No change.

Section	Summary of Comments	DESE Response
	Commenters asked that wording be added in Evaluation Procedures that required, as a final step in the RtI process, to administer an individualized battery of standardized tests and other procedures to make a final determination of eligibility for SLD.	Federal regulations require that a variety of assessment tools and strategies be used to gather information and that no single measure or assessment is used as the sole criterion for determining that a child is a child with a disability. The use of a battery of individual, standardized tests is not required. The DESE declines to go beyond the requirements of the federal regulations. No change made.
	A commenter asked that H and I under the Evaluation Report be reformatted and have some wording changed for clarity.	The DESE agrees. Changes have been made for clarity sake.
IV	Commenters asked that the terms "training" and "education" in relation to post-secondary transition be defined to enable districts to distinguish between the two.	The DESE believes that these are terms that are more appropriately included in guidance documents and declines to add these as definitions in the regulations.
	Commenters indicated that the IEP requirement for checking of hearing aids and cochlear implants on a daily basis and during evaluation procedures goes beyond the requirements of the federal regulations and asked that this be removed.	The DESE agrees. This requirement has been removed from the IEP requirements and a section reflecting the requirements of 34 CFR 300.113 has been added in the FAPE portion of Section IV.
	Commenters asked that changes be made to the wording under Transfers: Students with Known Disabilities as the current wording did not seem to be consistent with Federal Regulations.	The DESE agrees. This section has been revised to be consistent with federal regulations.
	Some commenters requested that the proposed changes for placements not be made and that the current placement categories be maintained.	The proposed changes are consistent with required federal placement categories and must remain.
	A commenter pointed out that a reference to the Part C State Regulations need to be made in the section relating to "Transition of Children from Part C Services to Part B Services."	The DESE agrees. This change has been made.
V	Some commenters suggested including further restrictions on the impartiality of hearing officers using a five year time period for certain specified connections to various stakeholders. One commenter requested adoption of an "appearance of impropriety" standard instead of the current "actual bias" standard.	Courts have so far upheld our impartiality standards. The suggested language from the commenters far exceeds even judicial impartiality standards and would hamper our expedient assignment of hearing officers by severely limiting the available pool in terms of numbers and IDEA knowledge base. The suggested adoption of one commenter for use of an appearance of impropriety is viewed as unnecessary and would be difficult to implement. The section shall remain as proposed.
	One commenter requested elimination of the proposed change for a 10-day prior written notice period, pointing out that the comments to the federal regulations indicated one time-line would be too rigid and in many cases might be unworkable.	While this time-line has not been contained in regulations, our state has used it as a requirement for many years and has addressed and approved exceptions, particularly in disciplinary situations where time is of the essence and a 10-day prior written notice period is in most instances too long. To allow continued flexibility to school districts and the Department, as envisioned by the U.S. Department of Education, Office of Special Education Programs (OSEP), we have eliminated the proposed change.

Section	Summary of Comments	DESE Response
	Some commenters suggested requiring Missouri residency and employment of the contract attorneys who serve as chairpersons, and one commenter suggested requiring U.S. citizenship of all hearing officers.	Missouri residency was required for laypersons on the three-member hearing panel primarily for fiscal concerns regarding travel expenses. The requirement can be standardized for contract attorneys and laypeople and still address fiscal concerns by a revision that addresses geographic location. The change will require for all hearing officers that they "must be residents of Missouri or an adjoining county of an adjoining state or demonstrate employment in Missouri or an adjoining county of an adjoining state." As IDEA or its implementing federal regulations do not speak to U.S. citizenship we decline to add this requirement at this time; however, we will explore this further for future revisions.
VI	Commenters asked that an exception clause to the definition of "in a timely manner" in regard to provision of accessible materials to blind students or other students with print disabilities under the NIMAS/NIMAC requirement. Commenters also requested that a qualifier to the State's responsibility under NIMAS/NIMAC be added as follows "The State must **take all reasonable steps to** provide instructional materials to blind persons or other persons with print disabilities in a timely manner."	The DESE has made a change to clarify the term "in a timely manner." The DESE declines to make the requested change regarding the state's responsibility for providing accessible materials, as it is the responsibility of the LEA to provide these materials.
	A commenter requested that the enforcement actions listed for non-compliance with state and federal regulations be re-ordered to indicate a more logical progression. It was also requested that the wording "if it is determined that the agency can correct the problem within one year" for a Corrective Action Plan and "if it is determined that the agency cannot correct the problem within one year" for an Improvement Plan be deleted.	The DESE agrees with these requests. Changes made.
	A commenter noted that there was a provision still contained in the proposed regulations that gave districts the ability to request approval for positions described under the job title "Other Pupil Personnel," but the Personnel Chart had proposed deletion of that category.	The DESE recognizes this inconsistency and has deleted all references to "Other Pupil Personnel."
	One commenter asked that the regulations include a concise statement of the policies and procedures that the State has developed to address Overidentification and Disproportionality or a direct reference to where these can be found.	The federal regulations require that the State develop policies and procedures regarding Overidentification and Disproportionality, however, it is not required that these be included in the state regulations. As policies and procedures must be flexible, it would be cumbersome and inefficient to include them in regulation. Likewise, a reference to a specific location would be inflexible and cumbersome to change if included in regulation. The DESE declines to make this change.

Section	Summary of Comments	DESE Response
VIII	Some commenters asked that the state regulations provide for a mandatory deadline to accomplish consultation with private schools, and suggested September 30 as the date for completion of the annual consultation process.	IDEA requires "timely and meaningful" consultation. IDEA federal regulations do not specifically require consultation annually; DESE has determined that consultation needs to occur annually in order for it to be "timely and meaningful." However, we are reluctant to regulate a rigid deadline for completion; our technical assistance to school districts will continue to recommend completion prior to the beginning of the school year and no later than September 30, but we decline to add this to the regulation.
	Some commenters suggested that school districts be required to file written affirmations of the consultation process with DESE as school districts file similar written affirmations with DESE as part of the Title I/Federal Programs application process.	Similar comments were received by the U.S. Department of Education during the federal regulation process. The Office of Special Education Programs (OSEP) pointed out that unlike Title I, the IDEA statute did not provide for such filings and declined to require this in the federal regulations. OSEP's reasoning was persuasive when it indicated that this would place additional burdens on the LEA that are not required by IDEA and those additional burdens did not seem warranted given that in most circumstances private school officials and LEAs have cooperative relationships that will not need state involvement. Private school officials who believe there was not meaningful consultation can raise that issue with DESE either informally or formally through the complaint process.
	Some commenters requested that guidance information on neutral site services, currently contained in technical assistance documents, be incorporated into regulation.	Technical assistance and guidance information in general is not incorporated into regulation. Regulation has the force of law and should not contain guidance or notes. The Department will continue to provide technical assistance on this topic and declines to add this information to the regulation.
IX	No Comments received	
X	No Comments received	
XI	One commenter asked for elimination of one of the factors listed as justification for removal from regular education: "The effect the presence of a child with a disability may have on the regular classroom environment on the education that the other students are receiving." The commenter indicates that since the federal regulations do not mention this factor, consideration of it is inappropriate and encourages discrimination.	The factor specified is one of many factors repeatedly identified by courts as part of the Least Restrictive Environment (LRE) analysis. No single factor controls in determining eligibility for State Schools for the Severely Handicapped (SSSH). All factors are balanced and considered together with the student's needs. In this way SSSH ensures no student will be accepted unless a school district has justified a separate school as the LRE. As courts have agreed on this factor for well over a decade, we decline to remove it.
XII	No comments received.	